

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

SAM DANIEL BELL	§	
v.	§	CIVIL ACTION NO. 9:06cv234
		(Crim. No. 9:04cr21)
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON MOVANT'S MOTION FOR CERTIFICATE OF APPEALABILITY

The Movant Sam Daniel Bell filed this motion to vacate or correct his sentence under 28 U.S.C. §2255. The motion was denied on October 31, 2006, and final judgment entered on that date. On December 21, 2006, Bell filed a notice of appeal.

On April 26, 2006, the Magistrate Judge issued a Report construing Bell's notice of appeal as incorporating a request for a certificate of appealability, and recommending that this request be denied. *See* Rule 22(b), Fed. R. App. P.; U.S. v. Youngblood, 116 F.3d 1113, 1115 (5th Cir. 1997). The Report was sent to Bell at his last known address, but was returned as undeliverable. It was re-sent to him at his new address, and he received it on June 20, 2007.

Bell did not file objections to the Report; instead, he wrote to the Court asking to "withdraw this alleged certificate of appealability," saying that he was unaware that his letter would be misconstrued as a motion which he did not file.

The Court has reviewed the Magistrate Judge's Report and has determined that this Report is correct. Should Bell wish to dismiss his appeal, he should contact the Fifth Circuit Court of Appeals to do so. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Movant's request for a certificate of appealability, contained by implication within his notice of appeal (docket no. 12) is hereby DENIED. It is further

ORDERED that the Movant's application for leave to proceed *in forma pauperis* on appeal (docket no. 19) is hereby DENIED. Finally, it is

ORDERED that the Movant's motion to withdraw his request for a certificate of appealability, filed June 28, 2007 (docket no. 23) is DENIED as moot.

So **ORDERED** and **SIGNED** this **2** day of **July, 2007**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge